IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

WP(C).No. 12657 of 2007(F)

CMP.2663/2006 of J.M.F.C., ADOOR

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PETITIONER:

P.VISWA MOHANAN PILLAI,
PLAMTHOTTATHIL HOUSE,
CHATHANOORPUZHA MURI,
ERATHU VILLAGE,
ADOOR TALUK.

BY ADV. SRI.K.MADHUSOODHANAN NAIR
SRI.C.B.SREEKUMAR

RESPONDENTS:

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1. STATE OF KERALA
REPRESENTED BY THE SUB INSPECTOR OF POLICE,
ADOOR REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA, ERNAKULAM

2. T.P.SOMANATHAN PILLAI,
JYOTHIS, PONNIVIZZHA MURI,
ADOOR TALUK, PATHANAMTHITTA DISTRICT.

BY GOVERNMENT PLEADER SRI.GIKKU JACOB

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 11/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

R.BASANT, J.

W.P.C.No.12657 of 2007

Dated this the 11th day of April 2007

JUDGMENT

The petitioner is the complainant in a prosecution under Section 138 of the Negotiable Instruments Act. The second respondent herein is the accused. The second respondent has raised a contention that the petitioner is a stranger to the second respondent and that the cheque was actually handed over by him to another person. It is further contended that, that other person, in collusion with the petitioner herein, has forged the cheque in question. The second respondent filed a private complaint alleging the commission of offence punishable under Sections 467 and 420 etc. against the petitioner and such other person. That complaint was referred by the learned Magistrate to the police under Section 156(3) Cr.P.C. The police conducted the investigation and submitted a negative final report (refer report). On being informed of the said refer report, the second respondent filed another (protest) complaint. That complaint is even now pending before the learned Magistrate. While so, the second respondent filed a petition under Section 173(8) Cr.P.C

before the learned Magistrate requesting the learned Magistrate to direct the police to conduct further investigation. The second respondent contended that no proper investigation has been conducted into the said crime by the police.

2. Before the learned Magistrate, the protest complaint against the refer report was there. There was also the petition under Section 173(8) Cr.P.C filed by the second respondent praying for further investigation and not to accept the refer report. The learned Magistrate considered the said petition under Section 173(8) Cr.P.C and passed Ext.P4 order. It was directed that the investigating officer must conduct further investigation under Section 173(8) Cr.P.C.

3. The petitioner claims to be aggrieved by the order. It is contended that the court has no jurisdiction to direct further investigation under Section 173(8) Cr.P.C at the instance of the defacto complainant. That question has now been concluded and it is by now trite after Shaji vs. State of Kerala [2003(2) KLT 929] that further investigation under Section 173(8) Cr.P.C can be directed suo motu or at the instance of the defacto complainant or at the instance of the accused or at the instance of the investigating officer.

4. The only other contention raised is that while the protest complaint is pending, such an order under Section 173(8) Cr.P.C should not have been passed. I find absolutely no error in that procedure. Even if cognizance has been taken on the subsequent protest complaint after the order under Section 173 (8) Cr.P.C is passed, the proper course to be followed will be to pass an order of stay under Section 210 Cr.P.C. There can, hence, be no question of the learned Magistrate proceeding with the protest complaint before the investigation in the case is completed.

5. In this view of the matter, I am satisfied that the impugned order does not warrant any interference. This writ petition is accordingly dismissed.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006